

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.609/2015
MA No.2088/2016**

This the 12th day of September, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Manjit Singh S/o Sardar Prem Singh,
R/o 518, 1st Floor, Sector-10D,
Chandigarh
(working as Joint Commissioner Income Tax) ... Applicant

(By Advocate: Mr. S. K. Gupta)

Versus

1. Union of India through
Secretary, Ministry of Finance,
North Block, New Delhi.
2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
3. Director General Income Tax (Vig.),
1st Floor, Dayal Singh Library,
1, Deen Dayal Upadhyay Marg,
New Delhi. ... Respondents

(By Advocates: Mr. Rajesh Katyal)

O R D E R

Justice Permod Kohli, Chairman :

The applicant is working as Joint Commissioner Income Tax (JCIT) in the office of Commissioner of Income Tax, ITAT

Chandigarh. He has challenged the charge-sheets dated 23.01.2014 and 27.08.2014 in the present OA. Despite opportunities, counter affidavit has not been filed. Vide order dated 25.08.2015 last opportunity was granted to the respondents to file their reply. However, reply has not been filed.

2. Facts leading to the filing of the present OA are that in the year 2004, the applicant was serving as JCIT, Patiala, when he was served with a charge-sheet dated 02.01.2004 proposing to initiate major penalty proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The disciplinary authority after receiving his reply to the charge-sheet appointed Commissioner of Departmental Inquiries, Central Vigilance Commission as inquiring authority, who submitted his report dated 14.06.2007 holding that the charges were not proved. The disciplinary authority obtained second stage advice of CVC who recommended imposition of major punishment. The disciplinary authority also consulted UPSC who also advised imposition of penalty of reduction by one stage in the time scale of pay for one year without cumulative effect. Copies of the inquiry report along with the CVC's second stage advice and the advice of UPSC were furnished to the applicant for his response. While these proceedings were in progress, the applicant approached the Chandigarh Bench of this Tribunal by filing OA No.851/CH/2012. One of the pleas raised

in the said OA was non-approval of the charge-sheet by the competent disciplinary authority. While the aforesaid OA was pending, the respondents issued another charge-sheet dated 23.01.2014 taking note of the judgment of the Hon'ble Supreme Court dated 05.09.2013 in case of *Union of India v B. V. Gopinath & others* (reported as (2014) 1 SCC 351). It is relevant to note that in *B. V. Gopinath*'s case the Hon'ble Supreme Court held that the charge-sheet must be approved by the disciplinary authority where the disciplinary authority itself is not the inquiring authority, and this was the issue raised by the applicant in OA No.851/CH/2012 before the Chandigarh Bench of the Tribunal. This fresh charge-sheet dated 23.01.2014 was issued after seeking approval of the charge-sheet dated 02.01.2004 from the competent disciplinary authority, as per the mandate of the judgment in *B. V. Gopinath*'s case (supra). It appears that the factum of fresh approval in compliance with the mandate of *B. V. Gopinath*'s judgment was not brought to the notice of the Bench at Chandigarh by any of the parties. The Bench, thus without noticing the issuance of the fresh charge-sheet, allowed the OA vide judgment dated 05.03.2014 and the charge-sheet dated 02.01.2004 was quashed in terms of the judgment in *B. V. Gopinath*'s case. Relevant observations of the Chandigarh Bench are as under:

“....Accordingly, O.A. is allowed in same terms of law declared by the Hon'ble Supreme Court in case of *B. V. Gopinath* (supra) and the impugned charge sheet dated

02.01.2004 is quashed and set aside. We are not touching other legal points with regard to the merit of the charges and the applicant is at liberty to raise all the points before the authority who will take note of them and proceed in the matter."

3. Since in *B. V. Gopinath*'s case (supra) liberty was granted to the disciplinary authority to proceed in accordance with law, the Chandigarh Bench disposed of the OA in terms of the aforesaid judgment and granted liberty to the applicant to raise all other legal points not adjudicated upon by the Tribunal, before the authority.

4. While issuing the fresh charge memorandum dated 23.01.2014, it was ordered that the disciplinary authority would continue from the stage where the proceedings stood before the charge memo dated 02.01.2004 was formally approved by the disciplinary authority. Since the charge memo dated 23.01.2014 was not brought to the notice of the Tribunal and the Tribunal quashed the original charge-sheet dated 02.01.2004 in terms of *B. V. Gopinath*'s judgment, the disciplinary authority in its wisdom issued another memorandum dated 27.08.2014 for initiating fresh disciplinary proceedings for major penalty under rule 14 of the CCS (CCA) Rules, 1965. This memorandum was accompanied with the articles of charge, statement of imputations of misconduct, list of documents etc. Though no reply has been filed by the respondents, however, from a perusal of the charge memorandum dated 23.01.2014, it appears that while issuing this memorandum, it was

mentioned that the proceedings would continue from the stage where the proceedings stood before the charge memo dated 02.01.2004 was formally approved by the disciplinary authority. As a matter of fact, the disciplinary authority seems to have initiated the entire exercise afresh while issuing the charge memo dated 27.08.2014. Challenge to both the charge-sheets, i.e., dated 23.01.2014 and 27.08.2014 is on the ground that two charge-sheets cannot be issued to a Government servant in respect of the same incident/allegations. It is also pleaded that since an inquiry was earlier held and the inquiring authority held the charges not proved, the fresh proceedings are *non est* in the eyes of law.

5. We have heard the learned counsel appearing for the parties at length.

6. The applicant had challenged the charge-sheet dated 02.01.2004 before the Chandigarh Bench primarily for want of approval by the competent authority. When the new charge-sheet dated 23.01.2014 was issued after the judgment in *B. V. Gopinath's* case was delivered by the Apex Court, it was obligatory on the part of the applicant to have brought the same to the notice of the Tribunal at Chandigarh where his OA was pending, but he did not do so for the reasons best known to him. At the same time, we find that there was a lapse on the part of the respondents as well, as they also failed to bring the factum of the fresh charge-sheet having been

issued to the notice of the Tribunal at Chandigarh. It was in the absence of the factum of new charge-sheet the Chandigarh Bench allowed the OA. It is important to note that the Chandigarh Bench had set aside the charge-sheet and further consequential proceedings not on merits but in view of the mandate of the judgment in *B. V. Gopinath*'s case (supra). Thus, the disciplinary authority had the liberty to proceed afresh. Under these circumstances, the fresh charge memorandum dated 23.01.2014 seems to have been issued as it contains reference to *B. V. Gopinath*'s case. The said memorandum, however, contained a stipulation that the proceedings would commence from the stage before the charge memo dated 02.01.2004 was formally approved by the disciplinary authority. The disciplinary authority, instead of superseding the charge memo dated 23.01.2014 initiated *de novo* proceedings and issued fresh charge-sheet dated 27.08.2014. It is, however, not in dispute that the substance of allegations in all the charge-sheets is common and same. Admittedly, further proceedings on the basis of fresh charge-sheet are yet to be initiated. We are conscious of the fact that two charge-sheets in respect of the same set of allegations are not permissible in law. Since the disciplinary proceedings, i.e., the inquiry and the further proceedings are yet to commence, the disciplinary authority has the opportunity to rectify its mistakes. As a matter of fact, charge memo dated 23.01.2014 should have been specifically superseded by

a fresh memo. There is definitely a lapse on the part of the disciplinary authority in not doing so.

7. The learned counsel for the applicant has brought to our notice vide MA No.2088/2016 that the Chandigarh Bench of the Tribunal has again allowed the OA No.851/CH/2012 vide judgment dated 29.10.2015 quashing the charge-sheet dated 02.01.2004. Copy of the judgment has been placed on record. We have perused the judgment dated 29.10.2015. The Tribunal has quashed the charge-sheet dated 02.01.2004 on merits holding that the charge memo in respect of quasi judicial action is not maintainable. Learned counsel for the respondents has brought to our notice that the said judgment is under challenge before the Hon'ble High Court of Punjab & Haryana in WP(C) No.4217/2016. The applicant has also placed on record copy of an order dated 20.05.2016, whereby the original charge-sheet dated 02.01.2004 has been withdrawn by the respondents subject to final outcome of the writ petition pending before the High Court of Punjab & Haryana. This order will have no impact since the charge-sheet dated 02.01.2004 has already been quashed by the Tribunal vide judgment dated 29.10.2015 in OA No.851/CH/2012. The submission of the applicant is that since the original charge-sheet has been withdrawn, the charge-sheets impugned in the present OA should also be declared to be *non est*. We do not agree with the submission. The charge-sheet dated

02.01.2004 having been quashed by the competent court holding that the charge memo in respect of quasi judicial action is not maintainable, its subsequent withdrawal would not make any difference.

8. Challenge to the charge-sheets in the present OA being not on merits or any settled legal question is not maintainable. However, the disciplinary authority has to either merge/consolidate the two charge-sheets dated 23.01.2014 and 27.08.2014 or supersede the first one before initiating further proceedings in the matter. Charge-sheets cannot be set aside merely on account of the fact that two charge-sheets have been issued.

9. It is also relevant to note that the original charge-sheet dated 02.01.2004 has been quashed by the Chandigarh Bench on merits vide judgment 29.10.2015 holding that the action complained of being a quasi judicial decision, cannot be subjected to disciplinary proceedings. We also notice that while quashing the charge-sheet dated 02.01.2004, no directions have been issued in respect of the subsequent charge-sheets dated 23.01.2014 and 27.08.2014, which were issued consequent upon the mandate of the judgment in *B. V. Gopinath's* case (supra). The judgment of the Chandigarh Bench dated 29.10.2015 is already under challenge before the Hon'ble High Court of Punjab & Haryana in WP(C) No.4217/16, and thus the continuation of disciplinary proceedings on the basis of the fresh

charge-sheets, even after the abovementioned directions are complied with, will depend upon the outcome of the writ petition before the Hon'ble High Court of Punjab & Haryana.

10. This OA is thus disposed of with the direction to the respondents to pass appropriate order either for consolidation of the two charge-sheets or supersession of one of the charge-sheets, as the proceedings could only be continued on the basis of one of the charge-sheets. Let consequential order be passed within a period of two months from the date of receipt of this order.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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